

1 IN THE UNITED STATES DISTRICT COURT  
2 OF THE DISTRICT OF COLUMBIA

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4 UNITED STATES OF AMERICA,  
5 Plaintiff

6

7 v.

Case No.

99C-CV-2496 (GK)

8

9 PHILIP MORRIS, INC., et al.,  
10 Defendants

11 -----

12 DEPOSITION OF MICHAEL T. WALLMEYER  
13 VOLUME I

14

15 December 19, 2002

16 Richmond, Virginia

17

18 Reported by:

19 Susan C. Neas

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<p>34</p> <p>1 Philip Morris, are you aware of any litigation other than 2 this lawsuit that the company has been involved in? 3 A Yes. 4 Q Are you aware of any time during the entirety of 5 your employment at Philip Morris that Philip Morris has not 6 been involved in litigation? 7 A I can't say with certainty. I mean, I recall 8 litigation going back into the '90s. I really don't -- I 9 don't have a good recollection prior to -- I mean, about 10 any litigation prior to that. 11 Q But when you say "the '90s", when in the '90s? 12 A Mid-'90s. 13 Q So as far as you recall, there has not been a 14 time since the mid-'90s when Philip Morris has not been a 15 party to a litigation? 16 A Right, to the best of my understanding. 17 Q Has Philip Morris management been aware of that 18 ongoing litigation? 19 MS. CECIL: Objection. 20 A I can't speak to what they have or have not been 21 aware of. I was aware through media coverage and from 22 information that's been distributed, as I said, desk tops 23 and so forth to employees. 24 25</p>	<p>36</p> <p>1 2 BY MR. BRODY: 3 Q Are you aware that the court in this case has 4 entered a document preservation order? 5 A Yes. 6 MR. BRODY: Let's mark this as Wallmeyer 7 Exhibit No. 2. 8 (Wallmeyer Exhibit No. 2 was marked 9 for identification.) 10 11 BY MR. BRODY: 12 Q And my first question is going to be; have you 13 seen this document before? 14 A I do not believe that I have. 15 Q Do you know whether this document was distributed 16 to all employees at Philip Morris? 17 A I do not know. 18 Q Do you know whether it was widely distributed? 19 A I do not know. 20 Q Okay. 21 If you turn to the fourth page of that document, 22 there is a paragraph numbered paragraph 7. And the first 23 sentence of that paragraph says, Each party shall preserve 24 all documents and other records containing information 25 potentially relevant to the subject matter of this</p>
<p>35</p> <p>1 BY MR. BRODY: 2 Q So internal company communications? 3 A Yes. 4 Q Would you agree that litigation is part of 5 business for Philip Morris? 6 MS. CECIL: Objection. 7 A I believe that litigation is something that the 8 company has been dealing with for an extended period of 9 time. 10 11 BY MR. BRODY: 12 Q Do you understand that Philip Morris has an 13 obligation to preserve documents relevant to litigation to 14 which it is a party? 15 A Yes. 16 Q Do you understand that obligation to exist 17 irrespective of whether a particular court has entered a 18 document preservation order? 19 MS. CECIL: Objection. 20 A I know that there have been disposal suspension 21 notices on certain topics of information for an extended 22 period of time. I, you know -- I personally don't recall 23 which litigation or which court orders or any particulars 24 about why they would have been initiated, other than the 25 one for this case.</p>	<p>37</p> <p>1 litigation; do you see that? 2 A I do. 3 Q What documents do you consider to be potentially 4 relevant to this litigation? 5 MS. CECIL: Objection. 6 A The company has issued a notice with the topics 7 that were related to this litigation with instructions that 8 those documents were to be retained. 9 10 BY MR. BRODY: 11 Q Do you have any understanding of documents 12 potentially relevant to this litigation outside of the 13 communication from the company that you have referred to? 14 A I'm sorry. Could you repeat that? I'm not sure 15 I fully understood the question. 16 Q Sure. Let me rephrase it and maybe it will be 17 easier to understand. 18 Outside of this communication from the company 19 that you have referred to, is there any other source for an 20 understanding on your part of documents potentially relevant 21 to this litigation? 22 A I'm sorry. I'm missing the question. 23 Q Sure. Let me try it one more time. I appreciate 24 it. Certainly, any time you don't understand the question, 25 let me know.</p>

<p style="text-align: right;">94</p> <p>1 Bill is an employee, I'm pretty sure, at ITSC. Oh, Jerry 2 Ward is a retired employee whom I spoke to. 3 Q When did Mr. Ward retire? 4 A I believe in 1998 also. 5 Q Does he still live in the area? 6 A He lives somewhere in Virginia on the River. I 7 don't know exactly where. 8 Q Why did you speak to Mr. Ward? 9 A I spoke with him in regard to back-up tapes and 10 storage. 11 Q What about back-up tapes and storage did you 12 speak with Mr. Ward about? 13 A I asked Mr. Ward if he knew of any tapes that had 14 been stored off-site as part of any retention process. 15 Q And what was his answer to that inquiry? 16 A His answer was, yes, he did. His recollection 17 was that in the 1994 time frame, that there were a number 18 of tapes, back-up tapes made of computer systems at PMUSA 19 that were stored in an off-site facility. 20 Q Did he tell you anything else in response to your 21 inquiry? 22 A Yes. 23 Q What else did he tell you? 24 A Numbers of tapes are -- his recollection was 25 there were 25 or 26,000 tapes stored as part of this --</p>	<p style="text-align: right;">96</p> <p>1 discussed whether that information was contained in that 2 listing, he did indicate that there was a time frame when 3 the tapes were made. 4 Q What was the time frame in which the tapes were 5 made? 6 A 1994-ish. 7 Q Beyond that at all? 8 A There may have been other electronic media added 9 to that storage in subsequent years. 10 Did I give you Randy Green's name? I believe I did. 11 Q You did. 12 A He indicated that there had -- that things had 13 been added over time. 14 Q What kinds of things? 15 A Additional tapes, electronic media, something 16 like that. 17 Q And the 1994 tapes, what time frame did the 18 material on the tapes encompass? 19 A It's my understanding that it was a back-up of 20 all computer systems at that point in time. So it was, 21 like, a snapshot of everything that existed at the time the 22 back-ups were taken. 23 Q Was that done in connection with litigation? 24 A To my understanding, it was. 25 Q Have those tapes been preserved since that time?</p>
<p style="text-align: right;">95</p> <p>1 stored off-site. Some of them could have had old DISOSS 2 emails stored on them, and that, I guess, he had worked 3 with the legal department or law department in getting 4 those tapes stored and cataloged. 5 Q What do you mean by "cataloged"? 6 A Basically indicated that there -- if there are 7 25,000 tapes, that there is a number assigned to each tape 8 that would indicate its physical location and any other 9 information that could be determined from looking at the 10 tape. 11 Q Would you describe this as an index? 12 A It's more like a listing. I don't remember if 13 "index" is the word that he used. But it's, basically, you 14 know, from 1 to 25,000, although we didn't discuss the 15 numbering scheme, and it says where it would be located, 16 what they thought might be on it and so forth. An index 17 may be an appropriate word. 18 Q Okay. 19 In terms of what would be on it, that would be what 20 was backed up on the tape 21 A That's correct. 22 Q Something like the time frame of the material? 23 A It's my understanding from talking to him that 24 there was a known time frame where these back-up tapes were 25 made, so -- although, I don't think we specifically</p>	<p style="text-align: right;">97</p> <p>1 A It's my understanding that they all still exist 2 in an off-site storage facility. 3 Q Do you know where the off-site storage facility 4 is? 5 A I believe it is -- physically located, I'm not 6 sure. I think it's Iron Mountain is the name of the 7 company. 8 Q Okay. 9 A I don't know if they are all in one location or 10 not. 11 Q Do you know whether the numerical listing that 12 you described is maintained or kept? 13 A Yeah. In talking to Randy Green, he indicated 14 that the list is maintained. 15 Q Do you know where? 16 A Oh, I do not know where. 17 Q Okay. 18 Do you know who has access to it? 19 A I believe Randy Green. I don't know if anyone -- 20 I don't know who else does. 21 Q What is Mr. Green's position? 22 A He is in the information services organization. 23 I am not sure I know his exact title. But for purposes of 24 these tapes, I asked him his -- you know, Jerry Ward said 25 he was fundamentally the custodian of that information. So</p>

<p style="text-align: right;">98</p> <p>1 I asked Randy, Would you be considered still the custodian 2 of that, and he said, Yes. 3 Q Okay. 4 Did Mr. Green tell you anything else about the tapes? 5 A No. 6 Q Is there a specific reason why additional 7 information after 1994 was added to that collection? 8 A I don't -- I didn't gather any information on 9 that. I don't know. 10 Q Do you know anything about the substance of 11 information, materials gathered to that collection since 12 1994? 13 A I don't. 14 Q When you described the additional information 15 added, are you talking about additional back-up tapes? 16 A According to Randy Green, it was some tapes or 17 some disks or, perhaps, some printouts, something like that 18 could have been put in, but there wasn't a lot of specific 19 information conveyed. He -- I mean, there just wasn't a 20 whole lot of information. 21 Q What kind of tapes? 22 A I'm sorry. Can you be more specific? 23 Q Who is the manufacturer of the tapes from the 24 1994 back-ups? 25 A I have no idea.</p>	<p style="text-align: right;">100</p> <p>1 A Okay. 2 Q You talked about the back-up process with him, 3 right? 4 A Yes. 5 Q When you talked about the back-up process with 6 Mr. Carlock, what did you talk about? 7 A I talked about frequency, technology, tape 8 recycle process and so forth. 9 Q In terms of technology, what did you talk about 10 regarding the back-up process? 11 A With Carlock? 12 Q Yes. 13 A How was it done under Mac mail servers, what 14 technology was used. 15 Q And what technology was used? 16 A The discussion with Mike indicated that it was 17 tape drives attached to the individual Mac mail servers. 18 That's what I recall from that conversation. 19 Q From the technological standpoint, how was the 20 1994 back-up that led to the creation of the tapes that you 21 understand are stored at an Iron Mountain facility 22 accomplished? 23 A That information was -- I didn't have that 24 information from Jerry Ward in terms of the technologies. 25 But what he did say was that it was a back-up of computer</p>
<p style="text-align: right;">99</p> <p>1 Q Do you know what format the information is stored 2 in on those tapes? 3 A I do not. 4 Q Do you know whether it's searchable? 5 A I do not. 6 Q Do you know how the tapes were created? 7 A Be more specific. 8 Q Sure. 9 Let me ask this question: At that time, 1994, was 10 there a system in place, separate and apart from the 11 exercise that created the tapes in the off-site storage 12 facility for backing up electronic material at Philip 13 Morris? 14 MS. CECIL: Objection. 15 A I'm not sure I fully understand the question. 16 Would you try one more time? 17 18 BY MR. BRODY: 19 Q Sure. 20 You've talked about speaking with a number of 21 people about back-up tapes, backing up the system? 22 A Uh-huh. 23 Q What did you mean when you -- well, let's take 24 one of the individuals. You said that you talked about 25 back-ups with Michael Carlock?</p>	<p style="text-align: right;">101</p> <p>1 systems. So I -- whatever technologies would have been 2 used within the data centers to back-up systems would have 3 been used -- my assumption is, would have been used for 4 that. 5 Q And what technologies were used in 1994? 6 A Well, again, this -- my recollection is in the 7 Philip Morris data center in that time frame, a number of 8 robotic tape technologies could have been used. I recall 9 that there was an STC silo for storage for storing tapes. 10 So I would assume that the back-up technology would have 11 dumped some of the tapes to the STC tape silo. I don't 12 recall if at that time there was a virtual technology tape 13 system installed. That may have been at a later date. 14 But, fundamentally, the standard back-up process for 15 whatever technology, be it mainframe or servers, it's my 16 understanding that those technologies would have been used 17 to generate the back-up tapes that were stored off-site. 18 Q Okay. 19 Did you make any effort to figure out what method 20 was used to create those back-up tapes? 21 A I did not. 22 Q Why don't you describe for me the STC silo that 23 you referred to? 24 A STC is -- my recollection is that stands for 25 Storage Technology Corporation. It was essentially a</p>

<p style="text-align: right;">102</p> <p>1 cylindrical device, probably 8 feet in diameter and, if 2 recollection -- 8 or 10 feet tall, with a tape robot 3 internal to it. And on the inside walls and -- were slots 4 where tape cartridges would have been stored. 5 So the mainframe computer system, when it needed to 6 access a tape or either for reading or for writing, a 7 message would go to the STC robot. It would grab the 8 appropriate tape, make it available to the computer system, 9 and then at some point in time return it, return it to the 10 slots. 11 Q You say for reading or for writing. In terms of 12 writing, would that be a system back-up? 13 A It could have been anything. It could have been 14 a back-up. It could have been -- some data files are not 15 retained on disk because either, A, are used infrequently 16 or are so large as to be unwieldy or overly expensive and 17 then are, in fact, just retained on tape you know, their 18 storage would not be on disk. It would be on tape. 19 Q And in terms of reading data, same thing, it 20 would grab a tape for reading that would be -- tell me when 21 that would happen. 22 A Same thing, if a file that one -- for example, 23 one of -- you know, a financial record from -- in the past 24 may not have been on disk, which I'd call online storage. 25 It may have been available on tape because it wasn't</p>	<p style="text-align: right;">104</p> <p>1 stored, again, along the sides of the system. 2 In the same fashion as with STC, if the computer 3 system needed to either read or write a tape, it would send 4 a message to the VTS or the operator system, find out from 5 the tape catalogue where that tape was stored. The message 6 would go to the VTS. It would then select the appropriate 7 tape. 8 And I don't know if this is the same process as 9 with STC, but it would select the appropriate tape, and then 10 knowing what it needed to be -- what needed to be read, it 11 would -- for speed and processing efficiency, it would 12 off-load the data on that tape onto an internal disk storage 13 device in the VTS. 14 The application would then process the data on the 15 VTS -- on that disk storage in the VTS. If it needed to be 16 updated, it would be updated. And then when that data was 17 not needed for processing any long, the VTS would then 18 update the data on the tape from the data that it had put 19 off onto that intermediate storage and return the tape to 20 its storage within the VTS itself. 21 Q Is the VTS system stilled used? 22 A Recall in 2000, in June of -- in July of 2000, 23 the ITSC took over Philip Morris USA's data processing for 24 enterprise systems. There is, in fact, VTS technology, to 25 the best of my knowledge, still in use at ITSC.</p>
<p style="text-align: right;">103</p> <p>1 frequently used. If it was necessary to retrieve some of 2 that information, the system would know that that 3 information was on tape. It would send a message to the 4 STC robot. It would select the right tape and make it 5 available to that program to read. 6 Q How many tapes are stored in the STC silo? 7 A This is an educated recollection. I don't know 8 for sure. 5,000. 9 Q Okay. 10 I assume the STC silo no longer exists? 11 A That's correct. 12 Q When did it cease to exist? 13 A In the late 1990s. It was replaced by a newer, 14 more reliable, faster, cheaper technology called VTS. 15 Q That's the virtual technology system? 16 A Virtual tape system. 17 Q Virtual tape system? 18 A Yes. 19 Q Okay. 20 Describe the virtual tape system for me. 21 A VTS is a technology that is from IBM, and it is 22 in itself another robotic tape system. As opposed to being 23 a cylindrical storage and robotic mechanism, it's basically 24 a series of rectangles or cubes or boxes that are stacked 25 one to the other with one or more robots in them and tapes</p>	<p style="text-align: right;">105</p> <p>1 Q When ITSC took over the data processing function 2 in July of 2000, was there a physical transfer of the VTS 3 to ITSC? 4 A Yes, but that was a -- it was a redundant 5 exercise. Let me explain how it worked. Again, in the 6 VTS, there were a large number of -- I want to say 5 to 7 7 or 8,000. Okay. The technology that was employed to 8 replicate the VTS and all of its contents in Richmond with 9 the VTS and all of its contents in Rye Brook was that 10 another VTS functionally identical to the one in Richmond 11 was installed in the Rye Brook data center and 12 communications link established between those systems. 13 Each VTS can have a -- what I'll call a master and slave, 14 kind of, relationship with the others. The VTS in Rye 15 Brook was installed several months before the July cut-over 16 date, and the VTSes were told to synchronize themselves. 17 So what happens is in periods of vital time, the Richmond 18 VTS would take data, transfer it over communication lines 19 to the Rye Brook VTS and they would be -- that's sort of 20 the movement of data. The VTS's then synchronizes each 21 other as data was modified or changed or at a point in time 22 after, you know, a several number of weeks -- I forget the 23 exact number -- had transpired, the Rye Brook VTS became 24 the master and the Richmond VTS became the slave. And so 25 this was a primary one that was in use. So during the</p>

<p>166</p> <p>1 capability of Philip Morris to tell whether an individual 2 employee has printed an email delivered to or sent by that 3 employee? 4 A I do not know if that capability exists. 5 Q Who would I -- who would you talk to if you were 6 going to try to figure out whether that capability exists 7 in the present Exchange environment? 8 A Again, I would start with Larry Davis. 9 Q Did you ask anyone that question in the course of 10 your preparation for today's deposition? 11 A I did not. 12 Q When did the DISOSS system cease to exist? 13 A The last usage of DISOSS went away before the 14 year 2000, before the Y2K project was completed. But the 15 usage of DISOSS at that point in time was really not for 16 email. DISOSS in the way I described how SAP could 17 perhaps -- could send messages advising someone to check on 18 and improve an expense statement, a similar capability 19 existed using DISOSS, in that when computer jobs completed 20 executing on the mainframe, a message could be sent to a 21 user saying this job has finished running or the total was 22 27, verify that against your records. So it was a 23 capability of sending a mail message. At that point, 24 DISOSS wasn't used as an email system. 25 Q At the time that DISOSS --</p>	<p>168</p> <p>1 changed between that time and the time that DISOSS ceased 2 to be used at Philip Morris? 3 A I have no information that it changed. 4 Q Okay. 5 Do you know whether any of those back-up tapes were 6 saved? 7 A Again, the 1994 tape discussion that we had, it's 8 my understanding that since all back-up tape -- all systems 9 were backed up, that there probably are DISOSS tapes 10 included in that grouping of 25 or 26,000. 11 Q Are you aware of any others, any other DISOSS 12 system back-up tapes that still exist today? 13 A No, I'm not. 14 Q During this time frame, October of 1991, why were 15 back-up tapes made? 16 A Back-up tapes were made as part of ongoing IS 17 practice. Part of running a data center includes being 18 prepared to recover data center operations in the event of 19 a catastrophe or a system hardware failure or something 20 like that. So back-up tapes are made of systems on a 21 periodic basis just for reasons of -- let me call it, 22 disaster recovery, whether they be small failures or large 23 crisis. 24 Q But they are not kept indefinitely? 25 A They are not.</p>
<p>167</p> <p>1 MR. BRODY: Well, why don't we mark this 2 as Wallmeyer Exhibit No. 9. 3 (Wallmeyer Exhibit No. 9 was marked 4 for identification.) 5 6 BY MR. BRODY: 7 Q If you'll take a look at the second page of this 8 document -- for the record, the cover page, which is Bates 9 number 2023596955, is a memorandum dated April 16th, 1992. 10 The subsequent page of the document actually is a later 11 Bates number. It's 2023596958. And it indicates DISOSS 12 has two sets of daily back-up tapes and five weekly tapes, 13 you know, in a message that's dated 10/10/91. Is it your 14 understanding that DISOSS was backed up on a daily and 15 weekly basis in 1991? 16 A Let me take a moment and read the message. 17 Q Sure. 18 A Thank you. 19 Okay. I'm sorry. Would you repeat the question? 20 Q Sure. 21 Is it your understanding that there were both daily 22 and weekly back-up tapes made of the DISOSS system in 1991? 23 A Well, based on this memo, that's what I read. It 24 says, Two sets of daily back-up and five weekly tapes. 25 Q Do you know whether the frequency of the back-ups</p>	<p>169</p> <p>1 Q How long were they kept for at this time? 2 A I'm not sure I have that information. 3 Q At the time that DISOSS ceased to be used at 4 Philip Morris, how long were they kept? 5 A I don't know that either. 6 Q How long are back-up tapes kept today? 7 A For any -- for which systems? 8 Q For the Exchange system. 9 A Okay. Well, for the Exchange system, since 10 April, there have been no system -- now, I told you there 11 are three sets of tapes -- 12 Q Right. 13 A -- that have been saved. The retention period 14 for normal back-ups for Exchange is a three-week cycle 15 rotation. 16 Q And that three-week cycle rotation was in place 17 prior to April of 2002? 18 A That is correct. 19 Q Going back how far? I mean, you say you don't 20 know what the time period was in 1991. How far back can 21 you trace that three-week retention period? 22 A Well, for what system? 23 Q Let's say -- 24 A We've talked about -- 25 Q Well, is there any system that -- other than the</p>

<p>170</p> <p>1 Exchange system that has been used since 1999?</p> <p>2 A No.</p> <p>3 Q Okay.</p> <p>4 From the time that all of the other email systems</p> <p>5 were migrated over to Exchange, has there been any other</p> <p>6 back-up tape retention period, other than the three weeks</p> <p>7 that you just talked about?</p> <p>8 A I spoke to a number of people to -- during the</p> <p>9 course of the -- of interviews for this, and a three-week</p> <p>10 retention cycle is the -- was the recollection of everyone.</p> <p>11 I don't recall if there was anything three -- at one point</p> <p>12 in time, I recall somebody may have said four, but the</p> <p>13 majority of the individuals indicated a three-week</p> <p>14 rotational cycle.</p> <p>15 Q And that's three weeks before the tapes are</p> <p>16 recycled?</p> <p>17 A Effectively, that's correct. The tapes would be</p> <p>18 created in one week. They would be stored for two</p> <p>19 additional weeks, and then come back and be available for</p> <p>20 reuse after the third week.</p> <p>21 Q Come back from where?</p> <p>22 A They may have been stored off-site at a tape</p> <p>23 storage facility, such as Iron Mountain, or sometimes a</p> <p>24 clone copy was retained that didn't leave the data center.</p> <p>25 But they could have been -- if they were off-site, it would</p>	<p>172</p> <p>1 CFO, did it provide any reason for the three-week retention</p> <p>2 period for back-up tapes?</p> <p>3 A I don't recall that it is. My recollection is</p> <p>4 that it simply stated the time period.</p> <p>5 Q Okay.</p> <p>6 Did it state anything else?</p> <p>7 A There were a number of things in the memo. If</p> <p>8 you have it, I'll be glad to look through it. I don't</p> <p>9 recall everything that was in it.</p> <p>10 Q All right.</p> <p>11 Why don't we look at this one for now?</p> <p>12 MR. BRODY: We'll mark this as Wallmeyer</p> <p>13 Exhibit No. 10.</p> <p>14 (Wallmeyer Exhibit No. 10 was marked</p> <p>15 for identification.</p> <p>16</p> <p>17 BY MR. BRODY:</p> <p>18 Q First question I'm going to ask you is if you've</p> <p>19 seen this document before.</p> <p>20 A I have.</p> <p>21 Q In what context did you first see this document?</p> <p>22 A In the course of the preparation for the</p> <p>23 deposition, I was looking for documents that would give</p> <p>24 information as to the back-up approach, any information</p> <p>25 about other email systems and so forth. This was uncovered</p>
<p>171</p> <p>1 be, like, a facility like Iron Mountain.</p> <p>2 Q Who if anyone made the decision to use a</p> <p>3 three-week retention period for back-up tapes?</p> <p>4 A I recall in the early part of the discussion this</p> <p>5 morning, we talked about the 1994 memo -- excuse me -- 1998</p> <p>6 memo -- I think that was the time frame -- from the CFO</p> <p>7 documenting some email policies.</p> <p>8 Q Right.</p> <p>9 A The tape retention cycle in the back-up process</p> <p>10 was referenced in that document.</p> <p>11 Q So it came from the CFO?</p> <p>12 A It came -- yes, the CFO assigned that policy,</p> <p>13 which is -- I think the date is about 1998.</p> <p>14 Q Are there any other policies applicable to email</p> <p>15 that have come from the CFO that you're aware of?</p> <p>16 A Policies applicable to email from the CFO? That</p> <p>17 document was the only one that I recall being identified as</p> <p>18 CFO distribution.</p> <p>19 Q Okay.</p> <p>20 MR. BRODY: Why don't we take 10 minutes.</p> <p>21 MS. CECIL: Okay.</p> <p>22 (Break.)</p> <p>23</p> <p>24 BY MR. BRODY:</p> <p>25 Q The policy that we were talking about from the</p>	<p>173</p> <p>1 during that time.</p> <p>2 Q So you hadn't seen it before that?</p> <p>3 A Pardon me?</p> <p>4 Q You had not seen it before that, the deposition</p> <p>5 preparation time?</p> <p>6 A I -- if I had, I do not recall that I had seen it</p> <p>7 previously.</p> <p>8 Q Now, the date of this document is October of</p> <p>9 1997; is that right?</p> <p>10 A That's correct.</p> <p>11 Q If you'll turn to page 6 of the document, which</p> <p>12 is numbered as 2067540076, it indicates that there is a</p> <p>13 single pool of tapes for the Operating and File System (OS</p> <p>14 Pool); do you see that in the second paragraph there, I</p> <p>15 believe?</p> <p>16 A Okay. I do.</p> <p>17 Q What do you understand that to mean?</p> <p>18 A Let me read the rest of the paragraph.</p> <p>19 Q Sure.</p> <p>20 A Okay.</p> <p>21 I'm sorry. Would you state the question one more</p> <p>22 time, please?</p> <p>23 Q What do you understand the statement, The</p> <p>24 messaging servers will require a single pool of tapes for</p> <p>25 the Operating and File System (OS Pool) to mean?</p>

<p style="text-align: right;">174</p> <p>1 A Well, I'd like to answer the question in the 2 context of the entire paragraph. 3 Q That would be fine. 4 A Okay. The -- with the sentence -- I would start 5 with the -- towards the end of it. It says, The retention 6 cycle for all pools is three weeks, based on legal 7 requirements detailed in the Standards and Guidelines 8 documents. The way I read this -- and let me put this 9 document in context, if I can. The team, the technical 10 team that implemented Exchange developed a large number of 11 documents describing how the technical processes for 12 managing Exchange should work, the mechanisms for how the 13 systems would be built and so forth. This document is the 14 thinking of the team as of its date, which says October 15 1997. And the way I read this particular paragraph is that 16 the operating systems and file systems would be information 17 on the servers that are required just for server operation. 18 And I would use the analogy that in a PC environment, for 19 example, it would be Windows 98 or Windows XP. 20 Okay. So it says that for the operating system and 21 the file system, there would be a pool of tapes. It says 22 the Exchange servers would require a pool of tapes for the 23 Directory, Public, and Private Information store and a 24 single pool for of tapes for the transaction logs. A single 25 clone pool will be used for tapes -- for data that will be</p>	<p style="text-align: right;">176</p> <p>1 based on legal requirements detailed in the PMI Standards 2 and Guidelines document. What legal requirements are you 3 aware of that govern the retention cycle for tape pools? 4 A I don't have any specific information on that 5 one -- on that topic. 6 Q So you don't know what legal requirements are 7 referred to here? 8 A I don't know what this is in reference to. 9 Q Are duplicate copies of back-up tapes made? 10 A In this case, that's what the clone pool is. And 11 there were up until the middle of 2000 some clone copies 12 made to go to the tape retention cycle. I do not believe 13 that the ITSC makes back-up copies of back-up tapes as part 14 of a regular process. 15 Q If you could turn to page 9 of the document we're 16 looking at. The Bates number ends in 0079. 17 A Okay. 18 Q You'll see it's a restore strategy. Are you 19 familiar with a restore strategy for Microsoft Exchange? 20 A If I can read through this, I'll know what this 21 is in reference to. 22 Q Sure. 23 A I have no -- prior to -- without reading it, I'm 24 not sure I understand the particulars. Would you like me 25 to?</p>
<p style="text-align: right;">175</p> <p>1 taken off-site. 2 So the way I read this is that they are describing 3 that the operating systems and file systems would be a set 4 of tapes, the Exchange directory, public, and private 5 information stores would be a set of tapes, the Exchange 6 transaction logs would be a set of tapes. And then for 7 information that needed to be retained in accordance with 8 the three-week record -- three-week retention cycle for the 9 tapes, that a clone pool would be developed, which would be 10 a copy of those tapes that needed to be taken off-site. 11 Q So the clone pool, those are the tapes that are 12 referred to by what is the subject of the three-week 13 retention policy? 14 A The three-week recycle. 15 Q Right? 16 A The three-week tape retention and tape recycle 17 process. That's right. That's the way I read this 18 document. 19 Q Are there any sets of back-up tapes that are 20 retained for longer than three weeks? 21 A Other than the ones that we discussed for the 22 back-ups in April of 2002 and any back-up tapes that are 23 part of the 1994 set of tapes, I am not aware of any. 24 Q You reference a portion of this paragraph that 25 refers to the retention cycle for all pools as three weeks</p>	<p style="text-align: right;">177</p> <p>1 Q Well, let me ask you an initial question first. 2 You'll see there's a note there in the middle of the page. 3 It says, The business partner Exchange server will be 4 located outside of the Philip Morris firewall; do you know 5 what that refers to? 6 A Let me read the rest of it, please. 7 Q Sure. 8 A Okay. 9 I can tell you what my best understanding of what 10 that means is. And let's go back to what we discussed a 11 while ago, is that today communication with external 12 business partners is done through the internet. Generally 13 available internet access wasn't something that the company 14 made available in the 1997 time frame. So the way I read 15 this is that for business partners that needed to 16 communicate with us in the manner that we discussed 17 previously, an Exchange server would be set up for them to 18 access. 19 The firewall is a hardware and/or software device 20 that would segregate that Exchange server from the rest of 21 the Philip Morris network for reasons of security. What 22 that note is referring is that there needs to be a mechanism 23 to allow that server to be backed up even though it's on the 24 outside of the firewall. 25 Q With the present environment where communication</p>



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1 of outside litigation counsel?

2 A I'm sorry. Could you repeat that?

3 Q Sure.

4 Do you know whether any specific legal concerns  
5 affecting Philip Morris existed in the 1996 time frame that  
6 would cause outside litigation counsel to be involved with  
7 the development of the policy on email use?

8 A I don't know for sure. I'm not sure I fully  
9 understand the intent of the question. We had discussed  
10 earlier about information -- back-up tapes and so forth  
11 being retained in 1994. And that was in response to  
12 litigation. There was a document issued in 1994, a  
13 disposal suspension document, that referenced electronic  
14 mail and printing and retaining. So going back to 1994,  
15 there was a print and retain relative to email. And,  
16 again, those dates are to the best of my recollection.

17 Q Okay.

18 And that -- the retention of the 25,000 or so  
19 back-up tapes from 1994, it's your recollection that that  
20 was specifically tied to a specific litigation?

21 A That was the information that I got, yes.

22 Q Do you know whether that litigation was ongoing  
23 in 1996?

24 A I don't have that information.

25 Q Do you know specifically what litigation that

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1 BY MR. BRODY:

2 Q Okay.

3 A But he was the primary source on the information  
4 on 25,000 tapes.

5 Q Do you know who prepares email use policies at  
6 Philip Morris?

7 MS. CECIL: Objection.

8 A The electronic communications policies -- and,  
9 again, I'll do this with best memory of recollection.  
10 There was an electronic communications policy issued which  
11 would reference email in June of 1998. That was issued by  
12 Jeff Bible. There was a subsequent, I believe, reissue of  
13 that in December of 1998, and then electronic  
14 communications policies have been reissued, as we said  
15 earlier, in 2001 and 2002.

16  
17 MR. BRODY: Let's mark this as Exhibit  
18 No. 17.

19 (Wallmeyer Exhibit No. 17 was marked  
20 for identification.)

21  
22 MS. CECIL: Can we go off the record for a  
23 second?

24 MR. BRODY: Sure.  
25 (Discussion off the record.)

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1 was?

2 A No, I don't.

3 Q What I was getting at with my question about  
4 whether there were legal concerns existing in 1996 such  
5 that work on the email policy would have implicated the  
6 concerns of outside litigation counsel, was trying to take  
7 the question one step further. I'll try to explain it in a  
8 way you can answer it.

9 You stated that you didn't know whether outside  
10 litigation counsel was involved in the development of the  
11 email policy. And the subsequent question is, really, do  
12 you know if there was any reason that existed at that time  
13 for outside litigation counsel to be involved in the  
14 formation of email policy?

15 MS. CECIL: Objection.

16 A I don't know.

17 And let me say, in response to the question from a  
18 moment ago, going back to the tapes from 1994, I asked Jerry  
19 Ward, who was the individual who was dealing with the tapes  
20 at that time, you know, why they were collected, and he  
21 didn't know the specific case information. You know, there  
22 were some things that he said he just didn't have the  
23 specifics on. So that's -- I don't have from him as a  
24 source what that case would have been.

25

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1 BY MR. BRODY:

2 Q If you can take a look at what we've marked as  
3 Exhibit No. 17 and tell me whether you've seen this  
4 document before?

5 A Yes, I have.

6 Q And this document is dated August 12th of 2002;  
7 is that right?

8 A Correct.

9 Q Was this document distributed to employees?

10 A It was.

11 Q To all employees?

12 A This was the document that was distributed by Joe  
13 Amado, I believe, August 20th, August 22nd, sometime in the  
14 August 2002 time frame by means of a desk drop -- email  
15 desk drop to all employees with a pointer to this document  
16 on the intranet.

17 Q Okay.

18 So it wasn't distributed in hard copy?

19 A I know that it was distributed through the desk  
20 drops and pointer. I'm not sure how many copies would have  
21 been distributed in hard copy.

22 Q Now, is this the current version of Philip  
23 Morris' electronic information and communications policy?

24 A To the best of my knowledge, it is.

25 Q So if an employee had a question about Philip

1 IN THE UNITED STATES DISTRICT COURT

2 OF THE DISTRICT OF COLUMBIA

3 -----

4 UNITED STATES OF AMERICA,

5 Plaintiff

6

7 v.

Case No.

99C-CV-2496 (GK)

8

9 PHILIP MORRIS, INC., et al.,

10 Defendants

11 -----

12 DEPOSITION OF MICHAEL T. WALLMEYER

13 VOLUME II

14

15 December 20, 2002

16 Richmond, Virginia

17

18 Reported by:

19 Susan C. Neas

20

21

22

23

24

25

<p style="text-align: right;">267</p> <p>1 are?</p> <p>2 A I have not seen any in this type of format. As I</p> <p>3 said, I'm not aware that there is a consistent format that</p> <p>4 is applied to all status reports. It's not something that I</p> <p>5 believe a policy has been set forth on. So when I said</p> <p>6 "generally" - I assume some could be in this format. I</p> <p>7 have never seen any in this format other than this document.</p> <p>8 And from this information, I can't tell for certain whether</p> <p>9 it is a status report or whether it's a stature - you know,</p> <p>10 or any other details about it. It's just - there's not</p> <p>11 enough information for me to draw that conclusion.</p> <p>12 Q Does your department, the IS department, do annual</p> <p>13 status reports?</p> <p>14 A Yes.</p> <p>15 Q And in those annual status reports, do you</p> <p>16 summarize highlight, accomplishments from the preceding</p> <p>17 year?</p> <p>18 A That's correct.</p> <p>19 Q And do you also summarize ongoing projects?</p> <p>20 A Generally, the - there's little discussion about</p> <p>21 ongoing projects. It's generally an account - a stature</p> <p>22 report of accomplishments through the year. If there's a</p> <p>23 large project that may span multiple years, it's conceivable</p> <p>24 it could be put in as some work that's ongoing. But</p> <p>25 generally, the structure of annual highlights or status</p>	<p style="text-align: right;">269</p> <p>1 corporate with that responsibility. I don't recall if this</p> <p>2 was the exact title.</p> <p>3 Q Okay.</p> <p>4 During the course of those discussions about</p> <p>5 someone with that responsibility, did William Brandt's name</p> <p>6 come up?</p> <p>7 A It may have. I really don't - I don't recall</p> <p>8 specifically.</p> <p>9 Q Okay.</p> <p>10 If you'll look down at the third bullet point from</p> <p>11 the bottom, there's reference to - it says, Finalize</p> <p>12 management systems for electronic media subject to court</p> <p>13 document preservation orders; do you see that?</p> <p>14 A Yes.</p> <p>15 Q Are you familiar with any such project having</p> <p>16 taken place in 1996?</p> <p>17 A I am not.</p> <p>18 Q So you don't know what was finalized?</p> <p>19 A I do not.</p> <p>20 Q And you don't know what the management systems</p> <p>21 referred to here are?</p> <p>22 A I do not.</p> <p>23 Q And do you know whether the electronic media</p> <p>24 referred to in this bullet point refers to email?</p> <p>25 A I have no information on that bullet point at all.</p>
<p style="text-align: right;">268</p> <p>1 reports is to document the work that occurred during the</p> <p>2 course of the year and was completed.</p> <p>3 Q Do you see the reference in this document under</p> <p>4 1996 highlights, the second bullet point says there, Hired</p> <p>5 attorney for newly created position as director of global</p> <p>6 records management; do you see that?</p> <p>7 A I do.</p> <p>8 Q Were you aware that there was a newly created</p> <p>9 position of director of global records management at Philip</p> <p>10 Morris in 1996?</p> <p>11 A That was not some information that I obtained</p> <p>12 during the course of the deposition preparation, and I</p> <p>13 personally was not aware of that.</p> <p>14 Q Okay.</p> <p>15 Had you heard about it anecdotally?</p> <p>16 A I had not.</p> <p>17 Q Are you way aware of such a position existing at</p> <p>18 Philip Morris presently?</p> <p>19 A I don't recall that I knew of a position with that</p> <p>20 title directly. I recall during the course of discussion</p> <p>21 yesterday you mentioned something that was similar to this,</p> <p>22 but I don't recall that I knew that that position existed</p> <p>23 and that terminology. The - there was some discussion</p> <p>24 during the course of interviews with Doug Miller and Bill</p> <p>25 Lynch, and there was some reference to individuals at</p>	<p style="text-align: right;">270</p> <p>1 Q Okay.</p> <p>2 The next bullet point says, Continued intercompany</p> <p>3 electronic mail task force efforts to develop a</p> <p>4 comprehensive electronic mail policy; do you see that?</p> <p>5 A Yes.</p> <p>6 Q Is it your understanding that a comprehensive</p> <p>7 policy had yet to be developed at that point?</p> <p>8 MS. CECIL: Objection.</p> <p>9 A I don't know the status of the development of</p> <p>10 such - of that. As we discussed yesterday, I believe, in</p> <p>11 July of 1998, the electronic communications policy was</p> <p>12 issued.</p> <p>13 MR. BRODY: Let's mark this one as 24, and</p> <p>14 I guess we'll mark this one as 25.</p> <p>15 (Wallmeyer Exhibit Nos. 24 and 25</p> <p>16 were marked for identification.)</p> <p>17 MR. BRODY: That's 24 and this is 25.</p> <p>18 (Indicating.)</p> <p>19 MS. CECIL: Okay.</p> <p>20</p> <p>21 BY MR. BRODY:</p> <p>22 Q Do you recognize the handwriting on Exhibit</p> <p>23 No. 24?</p> <p>24 A I don't.</p> <p>25 Q Have you seen the document marked as Exhibit</p>

<p>271</p> <p>1 No. 24 before?</p> <p>2 A No, I have not.</p> <p>3 Q If you'll turn to the third page of the</p> <p>4 document -- the Bates number there is 2082431522 -- do you</p> <p>5 see the heading at the top, 1997 Highlights, and then</p> <p>6 underneath that, Records and Information Management Program</p> <p>7 and Training Enhancements; do you see that?</p> <p>8 A Yes.</p> <p>9 Q And down the left side of the page there are</p> <p>10 bullet points; do you see that?</p> <p>11 A Uh-huh, yes.</p> <p>12 Q And this appears to be, this page at least, in</p> <p>13 handwritten format, much the same as the typed version for</p> <p>14 1996 in Exhibit No. 23; do you see that?</p> <p>15 MS. CECIL: Objection.</p> <p>16 A I wouldn't necessarily draw the conclusion that</p> <p>17 they are the same.</p> <p>18</p> <p>19 BY MR. BRODY:</p> <p>20 Q Okay.</p> <p>21 The first handwritten bullet point there reads,</p> <p>22 Establish plan to enhance Worldwide Records and Information</p> <p>23 Management Program by drafting revised user manual, devising</p> <p>24 prototype of simplified records retention schedules; do you</p> <p>25 see that?</p>	<p>273</p> <p>1 going on in 1997?</p> <p>2 A I can't speak to what he would know. I was just</p> <p>3 trying to -- you said did anyone during the course of my</p> <p>4 infor- -- deposition preparation give me any information</p> <p>5 about simplification. The comments with Doug were that he</p> <p>6 was coordinating activities. That was the closest reference</p> <p>7 to the question.</p> <p>8 Q Okay.</p> <p>9 Did he speak with anyone who was coordinating</p> <p>10 activities in the records management area in 1997?</p> <p>11 A As I stated yesterday, Lewis Cummings has been</p> <p>12 involved since 1977. He was still involved during 1997.</p> <p>13 Q In the course of your deposition preparation, did</p> <p>14 you talk to him about what he was doing in 1997 in the</p> <p>15 records management area?</p> <p>16 A Yes. And I think as we discussed yesterday, he</p> <p>17 was conducting annual assessments; he was working with</p> <p>18 records coordinators in individual departments to ensure</p> <p>19 that training occurred, that there was awareness of records</p> <p>20 management practices, manuals, practices, assisting with</p> <p>21 training and so forth.</p> <p>22 Q Above and beyond the compliance checks that you</p> <p>23 spoke with him about, did you talk about the development,</p> <p>24 evolution, if you will, of records management policies that</p> <p>25 would apply to email at Philip Morris in the 1997 time</p>
<p>272</p> <p>1 A I do.</p> <p>2 Q Was an effort made in 1997 to devise simplified</p> <p>3 record retention schedules?</p> <p>4 A I have no information regarding that. I don't</p> <p>5 know.</p> <p>6 Q Did you, in the course of your deposition</p> <p>7 preparation, ask any of the 54 people that you spoke with</p> <p>8 about whether an effort to simplify records retention</p> <p>9 manuals was made?</p> <p>10 MS. CECIL: Objection.</p> <p>11 A No, I didn't.</p> <p>12</p> <p>13 BY MR. BRODY:</p> <p>14 Q Did that come up in the course of your discussions</p> <p>15 with the 54 individuals?</p> <p>16 A Did what come up, simplification?</p> <p>17 Q Yes.</p> <p>18 A I don't recall that it did. In discussions with</p> <p>19 Doug Miller, he indicated that he was trying to bring</p> <p>20 multiple -- he was trying to coordinate activities within</p> <p>21 PMUSA. I don't recall that he discussed simplification in</p> <p>22 his role to try to the coordinate those activities.</p> <p>23 Q What was Doug Miller's position in 1997?</p> <p>24 A I don't think he came until 1998.</p> <p>25 Q So he wouldn't necessarily know about what was</p>	<p>274</p> <p>1 frame?</p> <p>2 A I did not.</p> <p>3 Q Do you know one way or the other whether there was</p> <p>4 a decision made to simplify record retention schedules in</p> <p>5 1997?</p> <p>6 A I don't know. I have no information on that.</p> <p>7 Q So you wouldn't then be able to tell me whether</p> <p>8 somebody at Philip Morris made the determination in 1997</p> <p>9 that the company could benefit from simplification?</p> <p>10 A Again, I have no information on that topic.</p> <p>11 Q Okay.</p> <p>12 And you wouldn't know whether that in and of itself</p> <p>13 was something that led the author of this document to write</p> <p>14 that down?</p> <p>15 A I do not know.</p> <p>16 Q What we've marked as No. 25 has the heading 1998</p> <p>17 Projects. First of all, do you know whose handwriting is on</p> <p>18 this here?</p> <p>19 A I do not.</p> <p>20 Q Have you ever seen William Brandt's handwriting?</p> <p>21 A Not knowingly.</p> <p>22 Q Okay.</p> <p>23 The third bullet point on this page under the</p> <p>24 heading 1998 Projects states, Implement interim solutions</p> <p>25 for electronic retention of electronic information subject</p>

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1 to disposal suspension; do you see that?  
2 A I do.  
3 Q Do you know whether Philip Morris implemented  
4 interim solutions for retention of electronic information  
5 subject to disposal suspension in 1998?  
6 A I am not aware of any.  
7 Q During the course of your preparation for the  
8 deposition today, did the subject of interim solutions for  
9 electronic retention of electronic information subject to  
10 disposal suspension come up in the course of conversations  
11 with any of the 54 people you spoke with?  
12 A Yes.  
13 Q Who did it come up with?  
14 A It came up in part of the discussion with David  
15 Fernandez.  
16 Q And what did --  
17 A And --  
18 Q Go ahead.  
19 A And Greg Cummings and, perhaps, with Doug Miller,  
20 but I'm not positive whether it was discussed with  
21 Mr. Miller.  
22 Q What did Mr. Fernandez -- what did you discuss  
23 with Mr. Fernandez about those subjects specifically?  
24 A The discussion with Mr. Fernandez was that there  
25 was some work ongoing to try to implement an electronic

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1 A Within the last two months or so.  
2 Q Okay.  
3 And each of the email messages with documents from  
4 those individuals dealt with solutions for electronic  
5 retention of electronic information subject to disposal  
6 suspension?  
7 A The subject of the emails was related to that  
8 general topic, but primarily related to allocation of staff  
9 personnel from information services to assist PMMC, the  
10 debtors [sic] organization in implementing the project.  
11 There -- most of those were related to identification of  
12 project manager or technical resources to assist. There was  
13 probably one or two documents -- one or two emails that had  
14 some prototype discussions about what the look and feel of  
15 the tool would be.  
16 Q And the emails with the prototype discussions, did  
17 they discuss the present status of a project like this?  
18 A Other than that the project was ongoing, if there  
19 was a detailed status, I don't recall. I know that they  
20 are -- I mean, it's at the point where there's enough work  
21 that's been done that they were looking to begin some  
22 testing and, perhaps, prototypical usage.  
23 Q And that's at the present time, they're working to  
24 begin testing?  
25 A Within the last two months or so.

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1 mechanism for storage of records subject to disposal  
2 suspension.  
3 Q Did Mr. Fernandez tell you anything else about  
4 that?  
5 A Other than that the work was ongoing, no.  
6 Q Did you review any documents related to the  
7 subject with Mr. Fernandez or otherwise?  
8 A Yes.  
9 Q What documents did you review on the subject?  
10 A They were not documents with Mr. Fernandez. They  
11 were documents as part of work that the information services  
12 organization is doing in conjunction with Philip Morris  
13 Management Corporation on a project that, I believe, is  
14 similar to this.  
15 Q Where did you get those documents?  
16 A Those documents were sent to me through email.  
17 Q Who sent them to you?  
18 A Arch Smith, Bob Hubbard, Deb Taylor, I believe the  
19 lady's name was May Wong, and there may have been an email  
20 from Kathi Hunter.  
21 Q Did you save those email messages?  
22 A I do have them.  
23 Q Have you printed them and retained them?  
24 A Not yet.  
25 Q When were these email messages sent to you?

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1 Q Okay.  
2 So October, November 2002?  
3 A Yes.  
4 Q When you print and retain email subject to  
5 disposal suspension notices, where do you keep it?  
6 A There is a container in my office where I place  
7 the records, and then when I have collected a sufficient  
8 number of records to be stored elsewhere, contact the  
9 records coordinator to get his assistance in securing the  
10 records in wherever they're supposed to be stored.  
11 Q And where are they supposed to be stored?  
12 A I don't actually have that information.  
13 Q So somebody comes and takes -- you make this call  
14 and then somebody comes and takes them away presumably to be  
15 placed where they're supposed to be stored?  
16 A That's the way I would work the problem -- work  
17 the storage of disposal suspended records, yes.  
18 Q Does everybody in your department do it the same  
19 way?  
20 A The training that we received indicates that that  
21 process should be followed for anybody in the department.  
22 Q Does everybody in the department do it the same  
23 way?  
24 A I don't have any information that they don't.  
25 Q Okay.

<p style="text-align: right;">295</p> <p>1 would have retained the record in accordance with records 2 management policy. 3 Q Now, the original heading on this document was 4 Definition of an Electronic Record; do you see that? 5 A I see something that looks like it could be that. 6 Q And then below that, there's a reference to 7 different kinds of electronic records? 8 A Yes. 9 Q And email is included with that different kinds of 10 electronic records; is that right? 11 A It's in that section, yes. 12 Q How many disposal suspension -- different disposal 13 suspension notices existed in 1996? 14 A I don't know. 15 Q Do you have any idea? 16 A I don't know the number of notices. I know that 17 the topics have been identified in various records 18 management manuals, but I don't know whether they were 19 distributed in one notice or whether they were distributed 20 in individual notices. I really don't know that answer. 21 Q Do you know how many different disposal suspension 22 notices existed in 1997? 23 A No, I don't. 24 Q I'll have you take a look at this. Let me ask 25 you, before I hand you this: Did you read the transcript of</p>	<p style="text-align: right;">297</p> <p>1 of -- as an individual disposal suspension notice, then I 2 would say, based on this document, 34. 3 4 BY MR. BRODY: 5 Q Okay. 6 Do you know how many existed in 1999? 7 A I do not. 8 Q Do you know how many existed in 2000? 9 A No, I don't. 10 Q Do you know how many existed in 2001? 11 A No, I don't. 12 Q Do you know how many exist today? 13 A No, I don't. 14 Q How are disposal suspension notices distributed to 15 employees, if at all? 16 A The distribution of disposal suspension notices is 17 accomplished by the records management organization, Doug 18 Miller's group. They are distributed in various forms 19 either -- to all employees through email and/or hard copy. 20 If there are disposal suspension notices that apply to only 21 specific individuals for functions, they would be 22 distributed to those individuals or functions by the -- by 23 Doug Miller's organization for the records coordinators. 24 Doug indicated that in many cases the disposal suspension 25 notices go from his organization to the records</p>
<p style="text-align: right;">296</p> <p>1 the deposition of William Lynch from April 26th, 2002 in 2 preparation for your deposition today? 3 A I did not. 4 MR. BRODY: Let's mark that as 27. 5 (Wallmeyer Exhibit No. 27 was marked 6 for identification.) 7 8 BY MR. BRODY: 9 Q I'm going to ask you to take a look at this 10 document and then ask you whether you can tell me how many 11 different disposal suspension notices existed in 1998? 12 MS. CECIL: Objection. 13 MR. BRODY: Excuse me? 14 MS. CECIL: I was debating whether it was 15 a question. 16 BY MR. BRODY: 17 Q Let me ask you a question. Can you tell me how 18 many -- how many, if you know, records management -- let me 19 start over. 20 How many, if you know, disposal suspension notices 21 existed in 1998? 22 MS. CECIL: Objection. 23 A Based on this document on pages that are Bates 24 number 2074706305 and 6, if what's identified as date of 25 notice and that sequential numbering is, in fact, the number</p>	<p style="text-align: right;">298</p> <p>1 coordinators. In some cases, they are, in fact, distributed 2 by Doug's organization directly. So it's still his 3 origination and/or the records coordinators. 4 Q In hard copy? 5 A In hard copy or email fashion. Sometimes both. 6 Q In the event they are distributed by email, is 7 there any audit conducted to see whether users have actually 8 read the email? 9 A I don't have that information. 10 Q Did that come up during the course of your 11 discussions with Doug Miller in preparation for your 12 deposition today? 13 A I don't recall that it did. 14 Q How long did you speak to Mr. Miller in specific 15 preparation for the deposition? 16 A Probably about three, three-and-a-half hours. 17 Q In person? 18 A Over the phone, I think, in all cases. 19 Q Was anyone else participating in the call? 20 A Yes. 21 Q Who was participating in the call? 22 A Cynthia Cecil, Ed Larkin, Jennifer Stevenson in 23 most cases. 24 Q Okay. 25 In your conversations with these 54 people that</p>

<p style="text-align: right;">383</p> <p>1 ghost items folder at 9,999 days cause system storage 2 capacity problems on the servers at Philip Morris? 3 A Yes. 4 Q Would it require additional server storage space? 5 A Yes. And let me explain. It's -- doing that is 6 fundamentally no different than the situation that we're in 7 now by not running the mailbox clean-up agent. 8 Q And the situation now that you're referring to is 9 not having run the clean-up agent since March 17th, 2002; is 10 that right? 11 A Not having run the clean-up to get rid of email 12 on -- to purge email on a periodic basis, right. 13 Q Since March 17th, 2002? 14 A That's right. 15 Q Now, we touched upon this briefly yesterday, but 16 in the spring of this year, Philip Morris discovered a 17 failure by certain employees to print and retain email prior 18 to deletion? 19 A Is that a question? 20 Q Is that right? 21 A Well -- it's -- yeah. My -- what I learned during 22 the course of preparation for the deposition was that in the 23 time frame from February through June of 2002, that in the 24 course of preparation for depositions and interviews, it was 25 discovered that some individuals may have lost some email to</p>	<p style="text-align: right;">385</p> <p>1 the attention of Philip Morris? 2 A I don't -- I have -- the information I was given 3 said February. 4 Q To whose attention at Philip Morris did this 5 situation come in February of 2002? 6 A I don't know the individual to whose attention in 7 February. It would have been brought to -- the information 8 was conveyed to me. The facts regarding the situation were 9 conveyed to me by David Fernandez. 10 Q And David Fernandez is an in-house lawyer at 11 Philip Morris? 12 A That's correct. 13 Q Did the information come to the attention of Greg 14 Cummings in February of 2002? 15 A My discussion with Mr. Cummings, I recall that it 16 did not come to his attention at that time frame. Now, also 17 remember Mr. Cummings sometime in February moved into his 18 job of senior VP of quality and compliance. So prior to 19 February, he was not in that position. I don't know the 20 exact day of February that he took that. 21 Q Did it come to Mr. Cummings' attention at a later 22 time? 23 A Yes. 24 Q When did it come to his attention? 25 A From my discussion with Mr. Cummings, it's my</p>
<p style="text-align: right;">384</p> <p>1 the IS system clean-up process by not fully following the 2 print and retain policy. 3 Q When you say "it was discussed", what do you mean 4 by that? 5 A I thought I said it was discovered. 6 Q Discovered, I'm sorry. 7 A Right. 8 And it was -- those emails would have been in -- 9 they may have lost those emails in electronic form. 10 Q Meaning the emails were deleted in system purges? 11 A Meaning that an electronic form of the email could 12 have been lost. 13 Q And the loss of -- the potential loss of the 14 electronic form of the email was accompanied by a failure to 15 print and retain; is that right? 16 A Again, I am not sure that anybody can definitively 17 say if email was lost, but if it was lost, it was due to the 18 loss in the electronic form due to the system clean-up 19 process and by not following the print and retain policy 20 fully. 21 Q When did Philip Morris become aware that email of 22 certain employees may have been lost? 23 A My understanding is that in the time period from 24 February through June, early June. 25 Q Do you know when in February this first came to</p>	<p style="text-align: right;">386</p> <p>1 recollection that he was made aware of the situation in 2 June. 3 Q What precisely came to the attention of 4 Mr. Fernandez in February of 2002? 5 A I don't have the information about what precisely 6 he was -- he learned in February. 7 Q Did he learn in February that email -- that 8 certain employees had failed to print and retain email that 9 had been later deleted in the course of system-wide mail 10 purges? 11 MS. CECIL: Objection. 12 A I don't have the information about what he 13 specifically learned in February. 14 15 BY MR. BRODY: 16 Q Did you speak with him about the events? 17 A I did. 18 Q What did he tell you about it? 19 A What he said to me was that during the course of 20 preparation for depositions and interviews with employees 21 that in the time period between February and June he learned 22 that some individuals may have lost some email in electronic 23 form due to the IS system clean-up process and their failure 24 to fully follow the print and retain policy. 25 Q Did he specify which individuals?</p>

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1 A He did.  
2 Q And are those the 11 individuals that we talked  
3 about yesterday?  
4 A Yes, they are.  
5 Q Were there any additional employees included  
6 within the group that came to his attention?  
7 A I have no information that there were. I asked  
8 him if there were any others, and he said the -- there were  
9 not.  
10 Q Okay.  
11 Did all 11 persons -- were all 11 persons identified  
12 in February of 2002?  
13 A I don't have that information.  
14 Q Did you ask Mr. Fernandez whether the lost email  
15 was subject to the court's document preservation order in  
16 this case?  
17 A I don't recall that I specifically asked him that  
18 question.  
19 Q Did he specifically answer it irrespective of  
20 whether it was asked?  
21 A I don't recall that it was specifically part of  
22 the discussion. I mean, the context was that some  
23 information that was subject to disposal suspension may have  
24 been lost, which I believe was the context of the  
25 conversation.

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1 Q Did he specify whether that was email that was  
2 subject to the disposal suspension notice issued on  
3 November 8th, 1999?  
4 A I don't recall that he did, but I believe in -- I  
5 don't recall that he did.  
6 Q Did anyone that you spoke with in preparation for  
7 your deposition indicate whether the identities of all 11  
8 individuals became known in February of 2002?  
9 A No, nobody indicated that.  
10 Q Did anyone indicate otherwise?  
11 A I -- the question that I asked Mr. Fernandez  
12 was -- when it was learned or during the course of the  
13 interview with him, he volunteered that the information was  
14 gleaned during his investigations that went on from February  
15 through June.  
16 Q Who are those -- who undertook those  
17 investigations?  
18 A The Philip Morris law department is my  
19 understanding.  
20 Q The in-house lawyers?  
21 A I don't have the names of the individuals or  
22 whether it was in-house or external. But I was told the  
23 Philip Morris law department directed the investigation.  
24 Q Did you ask for the identity of specific  
25 individuals within the law department?

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1 A I did not.  
2 Q Did you ask anyone for the identity of specific  
3 individuals within the law department?  
4 A I did not.  
5 Q Do you know whether anyone in the law department  
6 communicated this piece of information to anyone at any  
7 other department at Philip Morris?  
8 A Could you be more specific about this information?  
9 Q Sure.  
10 The information that the law department uncovered  
11 during the course of their investigation beginning in  
12 February of 2002 that certain individuals may have failed to  
13 follow the print and retain policy and lost email as a  
14 result of the system-wide deletions, was that information  
15 communicated to anyone at Philip Morris outside of the law  
16 department?  
17 A Well, let me state again just to make sure that  
18 I'm using my words and not yours.  
19 Q Sure.  
20 A Is that the information that I got from  
21 Mr. Fernandez is that some employees may have lost some  
22 email in electronic form due to the IS system clean-up  
23 process and the failure to follow the print and retain  
24 policy. That information was communicated to Mr. Cummings,  
25 certainly. I don't know -- Greg Cummings -- and I don't

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1 know what other individuals it may have been communicated  
2 to. But I do know it was communicated to Greg Cummings.  
3 Q And do you know when it was communicated to Greg  
4 Cummings? I think I asked that, but forgive me if I'm  
5 asking again.  
6 A According to my recollection from Mr. Cummings,  
7 that discussion, he received that information in June.  
8 Q Okay.  
9 Do you know any additional details about the  
10 investigations that you've described as having been  
11 conducted by the law department?  
12 A No, I don't.  
13 Q You just know that it was an investigation?  
14 A That's correct.  
15 Q Did it involve -- do you know whether it involved  
16 interviews with employees?  
17 A I do not know the structure of the investigation.  
18 Q Do you know Christina Hollis?  
19 A I do not know her.  
20 Q Have you ever met her?  
21 A I have not.  
22 Q Do you know what her position is at Philip Morris?  
23 A I believe she is an analyst in marketing  
24 information and planning.  
25 Q Do you know whether in that position she has any



<p style="text-align: right;">391</p> <p>1 interaction with outside business partners?</p> <p>2 A I do not know.</p> <p>3 Q Do you know whether she has any interaction from</p> <p>4 anyone from R.J. Reynolds?</p> <p>5 A I do not know.</p> <p>6 Q Do you know if she has any interaction with anyone</p> <p>7 from Brown &amp; Williamson?</p> <p>8 A Again, I do not know.</p> <p>9 Q I'll short-circuit this.</p> <p>10 Do you know whether she has any interaction with</p> <p>11 anyone from any other tobacco company?</p> <p>12 A I do not know.</p> <p>13 Q Do you know whether she uses email in the course</p> <p>14 of her work as an analyst?</p> <p>15 A I don't know specifically, but I would draw from</p> <p>16 the reference that since she may have lost some email in</p> <p>17 electronic form due to the system purge process and not</p> <p>18 following print and retain, I draw the conclusion that she</p> <p>19 does use email.</p> <p>20 Q Okay.</p> <p>21 Do you know when it came to Philip Morris' attention</p> <p>22 that Ms. Hollis may have failed to follow the print and</p> <p>23 retain policy?</p> <p>24 A The only information I have regarding that would</p> <p>25 be the February to June time frame of 2002.</p>	<p style="text-align: right;">393</p> <p>1 discussion we had regarding Ms. Hollis.</p> <p>2 Q Do you know whether he uses email to communicate</p> <p>3 with outside business partners?</p> <p>4 A I have no knowledge of that.</p> <p>5 Q Do you know whether he uses email to communicate</p> <p>6 with other tobacco companies?</p> <p>7 A I have no knowledge in that area.</p> <p>8 Q Do you know whether any of the 11 individuals that</p> <p>9 we've listed in this category use email to communicate with</p> <p>10 other tobacco companies?</p> <p>11 A I do not know. I have no information in that</p> <p>12 regard.</p> <p>13 Q Do you know whether any of the 11 individuals use</p> <p>14 email to communicate with Philip Morris business partners?</p> <p>15 A I do not know.</p> <p>16 Q Do you know Peter Lipowicz?</p> <p>17 A I do not.</p> <p>18 Q Do you know what his position is at Philip Morris?</p> <p>19 A I believe he is a principal scientist in research</p> <p>20 and development.</p> <p>21 Q Do you know that he has been designated by Philip</p> <p>22 Morris as an expert witness in this action?</p> <p>23 A No.</p> <p>24 Q Do you know Mike Pfeil?</p> <p>25 A No. I know who he is, but I don't know him.</p>
<p style="text-align: right;">392</p> <p>1 Q Do you know Sherry Teitelbaum?</p> <p>2 A I do not know her personally.</p> <p>3 Q Do you know what position she holds at Philip</p> <p>4 Morris?</p> <p>5 A It is my understanding she is a director in</p> <p>6 marketing and information planning.</p> <p>7 Q Do you know whether she uses email to communicate</p> <p>8 with Philip Morris business partners in connection with her</p> <p>9 responsibilities?</p> <p>10 A I do not know.</p> <p>11 Q Do you know whether she communicates with other</p> <p>12 tobacco companies in connection with her responsibilities?</p> <p>13 A I don't know.</p> <p>14 Q Do you know when she was deposed in this action?</p> <p>15 A No, I don't.</p> <p>16 Q Do you know Steve Sampson?</p> <p>17 A I do not.</p> <p>18 Q Do you know what position Steve Sampson holds at</p> <p>19 Philip Morris?</p> <p>20 A I believe he is a manager in the marketing</p> <p>21 department.</p> <p>22 Q Do you know whether Mr. Sampson uses email in the</p> <p>23 course of performing his duties as manager in the marketing</p> <p>24 department?</p> <p>25 A I would believe that he does subject to the</p>	<p style="text-align: right;">394</p> <p>1 Q Who is Mike Pfeil?</p> <p>2 A My recollection is he is vice president of public</p> <p>3 and community relations, public and community relations, I</p> <p>4 think.</p> <p>5 Q Do you know whether he uses email in the course of</p> <p>6 his work?</p> <p>7 A I assume that he does.</p> <p>8 Q Is your assumption the same for the remaining</p> <p>9 persons that we haven't discussed of the 11 on the list?</p> <p>10 A Yes, with the possible exception of Nancy Lund,</p> <p>11 whom I understand is not really an email user.</p> <p>12 Q Do you know Hector Alonso?</p> <p>13 A I have met him.</p> <p>14 Q When did you meet him?</p> <p>15 A 1999.</p> <p>16 Q And what was the -- where did you meet him?</p> <p>17 A In Richmond.</p> <p>18 Q What was the context of the meeting?</p> <p>19 A This was during the discussions about the</p> <p>20 Information Technology Service Center being formed, and</p> <p>21 there was also a discussion about whether Philip Morris USA</p> <p>22 would build a new data center to have its data center</p> <p>23 operations, and we were discussing with Mr. Alonso issues</p> <p>24 related to possible data center construction.</p> <p>25 Q Do you know what Mr. Alonso's present position is</p>

<p>395</p> <p>1 at Philip Morris?</p> <p>2 A I believe he is vice president in research and</p> <p>3 development.</p> <p>4 Q For any of the 11 individuals in this group, do</p> <p>5 you have any idea as to the quantity of email that was lost?</p> <p>6 A I do not.</p> <p>7 Q Did you attempt to find this information out in</p> <p>8 the course of your preparation for the deposition today?</p> <p>9 A Yes. The -- in the discussions with David</p> <p>10 Fernandez, we had discussions about -- nobody knows for sure</p> <p>11 whether any email is lost, and because it's -- because it</p> <p>12 can't be determined with certainty whether any email is</p> <p>13 lost, the volume of any email that may have been lost can't</p> <p>14 be determined.</p> <p>15 Q Why can't it be determined whether any email was</p> <p>16 lost?</p> <p>17 A Because any email subject to disposal</p> <p>18 suspension -- okay. Let me say that. Because if it's lost,</p> <p>19 nobody knows what it was or where it was.</p> <p>20 Q Did you talk to any of the 11 individuals that</p> <p>21 we've discussed as part of your preparation for your</p> <p>22 deposition?</p> <p>23 A I did not.</p> <p>24 Q Did you consider talking to any of them?</p> <p>25 A No.</p>	<p>397</p> <p>1 Q Did you ask anyone whether any of these</p> <p>2 individuals were disciplined for their failure to follow the</p> <p>3 print and retain policy?</p> <p>4 A I asked Mr. Cummings.</p> <p>5 Q What was his answer?</p> <p>6 A His answer was that -- and, again, he and</p> <p>7 Mr. Fernandez both stressed that it is their understanding</p> <p>8 that any loss of email was entirely inadvertent, and that</p> <p>9 both of them stated, in fact, these individuals thought that</p> <p>10 their email was being retained, that it was their lack of</p> <p>11 understanding of how the IS system clean-up really worked</p> <p>12 coupled with the failure to fully follow the print and</p> <p>13 retain policy that some email in the electronic form might</p> <p>14 have been lost.</p> <p>15 I asked Mr. Cummings specifically what actions were</p> <p>16 taken, and he said that he chose to work on improving the</p> <p>17 processes and practices around records management and</p> <p>18 improve the entire process, rather than take actions against</p> <p>19 individuals that he believed had inadvertently allowed an</p> <p>20 action to be taken relative to their email.</p> <p>21 Q Did he tell you how it came to be that these</p> <p>22 individuals understood or thought that their email was being</p> <p>23 retained?</p> <p>24 A Did not discuss why an individual thought that it</p> <p>25 may have been retained.</p>
<p>396</p> <p>1 Q You didn't seek any of them out?</p> <p>2 A No, I didn't.</p> <p>3 Q Why not?</p> <p>4 A Again, going back to the items in the Notice of</p> <p>5 Deposition that you sent, my interpretation was you were</p> <p>6 looking for instances and actions, and that is the -- my</p> <p>7 understanding is that these are the instances that would</p> <p>8 relate to that. I didn't look for the circumstances.</p> <p>9 Q Did you ask Mr. Fernandez whether any of these 11</p> <p>10 individuals took any actions independently to attempt to</p> <p>11 restore lost or deleted email?</p> <p>12 A I did not ask him that question.</p> <p>13 Q Did you ask anyone that question?</p> <p>14 A I don't think I did.</p> <p>15 Q Did you discuss that subject with anyone?</p> <p>16 A The subject that?</p> <p>17 Q The subject of attempts that may or may not have</p> <p>18 been taken by these individuals to restore lost or deleted</p> <p>19 email?</p> <p>20 A No, I don't think I did.</p> <p>21 Q Okay.</p> <p>22 A I don't recall doing that.</p> <p>23 Q Were any of these 11 employees disciplined for</p> <p>24 their failure to follow the print and retain policy?</p> <p>25 A I am not aware of that.</p>	<p>398</p> <p>1 Q Irrespective of whether you discussed it with</p> <p>2 anyone, do you have any idea why or how these individuals</p> <p>3 came to understand that their -- came to believe that their</p> <p>4 email was being retained?</p> <p>5 MS. CECIL: Objection.</p> <p>6 A I really don't -- I mean, I can't speak to what</p> <p>7 the individuals understood or what I think they understood.</p> <p>8 I don't know.</p> <p>9</p> <p>10</p> <p>11 BY MR. BRODY:</p> <p>12 Q And you didn't speak to any of them and,</p> <p>13 obviously, you don't know how they came to get that</p> <p>14 understanding?</p> <p>15 A I did not speak with him. That's correct.</p> <p>16 Q Do you know any other Philip Morris employees that</p> <p>17 these 11 --</p> <p>18 A I can't speak to what any other individual</p> <p>19 understands or doesn't understand.</p> <p>20 Q You have no idea?</p> <p>21 A I can't speak -- that's right -- I don't --</p> <p>22 understand or not understand.</p> <p>23 MR. BRODY: Let's mark this as 37.</p> <p>24 (Wallmeyer Exhibit No. 37 was marked</p> <p>25 for identification.)</p>